

Amendment and Response.

Serial No.: 09/551,706

Confirmation No.:

Filed: 18 April 2000

For: APPARATUS AND METHODS FOR PACKAGING AND STORING MOISTURE-SENSITIVE PRODUCTS
IN RESEALABLE POUCHES

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Remarks

The Office Action dated June 6, 2001 has been received and reviewed.

Reconsideration and withdrawal of the rejections in view of the following remarks and consideration of the new claims are respectfully requested.

Information Disclosure Statement

It is noted that the Examiner failed to initial two documents listed in the PTO-1449 forms ("Cellacast-Longuette. . ." and "pictures of Lohmann Cellacast"). It is requested that a copy of the 1449 form, with the identified documents initialed as having been considered by the Examiner, be provided with the next Official Communication. If the Examiner is unable to consider these documents, an explanation is respectfully requested.

The 35 U.S.C. §112, Second Paragraph, Rejection

Claim 21 was rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Specifically, the Office Action asserts that the phrase "form a mushroom shape" is vague and indefinite. Applicants' representative disagrees.

The focus during examination of claims for compliance with the requirement for definiteness of 35 U.S.C. §112, second paragraph, is whether the claim meets the threshold requirements of clarity and precision, not whether more suitable language or modes of expression are available. See MPEP §2173.02. "The essential inquiry pertaining to this requirement is whether the claims set out and circumscribe a particular subject matter with a reasonable degree of clarity and particularity. Definiteness of claim language must be analyzed, not in a vacuum, but in light of: (A) The content of the particular application disclosure; (B) The teachings of the prior art; and (C) The claim interpretation that would be given by one possessing the ordinary level of skill in the pertinent art at the time the invention was made." *Id.* at §2173.02.

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The phrase "mushroom shape" is discussed in the specification (see e.g., page 11, lines 10-30) and illustrated in the accompanying drawings (Figures 4 and 5A). Moreover, "mushroom shape" is well understood to indicate a shape similar to that of a common mushroom. For example, Websters New World College Dictionary, third edition (1996), defines "mushroom" as "any of various rapidly growing, fleshy fungi, typically having a stalk capped with an umbrella-like top" and also includes within the definition "anything like a *mushroom in shape*" (see page 894).

Applicants' representative submits that one of skill in the art would understand the meaning of the phrase "form a mushroom shape" based not only on the description provided in the specification, but also on the general knowledge in his or her possession. Reconsideration and withdrawal of the rejection are respectfully requested.

The 35 U.S.C. §102 Rejection

Nakamura/Cernhous

Claim 1 was rejected under 35 U.S.C. §102(b) as being anticipated by Nakamura (assumed to be U.S. Patent No. 5,076,424) and also by Cernhous (International Patent WO 96/20884). In addition, claims 2, 5-9, 13-15, 17-20, and 22 were rejected under 35 U.S.C. §102(b) as being anticipated by Nakamura. These rejections are traversed for at least the following reasons.

Claim 1 describes a pouch having a first end, a second end, and a pouch length extending therebetween, and a moisture-sensitive product having a continuous length, the product being folded into a packaged configuration having a plurality of sections arranged within the interior and along the pouch length, each section comprising at least two folds and a segment spanning therebetween, the segment also extending along the pouch length.

Nakamura, contrary to the assertions of the Office Action, does not illustrate the claimed apparatus. For example, if one considers that Nakamura has "sections" arranged along

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the pouch length (i.e., vertically in Figure 13) where each section includes at least two folds and a segment spanning therebetween, then the "segments" of Nakamura do not *extend along the pouch length*, e.g., the Nakamura material is not folded in such a way that the segments extend along the pouch length but is rather folded such that the segments extend transverse, i.e., across, the length of the Nakamura container. Thus, Applicants' representative does not agree with the Office Action's assertion that "a given segment of the product 3 as it is shown in Fig. 13 will extend to some degree along the pouch length" (Office Action, page 3). As a result, claim 1 and the claims that depend therefrom (including claims 2, 5-9, 13-15, 17-20, and 22) are not anticipated by Nakamura.

Similarly, Cernohous et al. does not illustrate the apparatus of claim 1. For instance, if the "sections" of Cernohous are arranged "along the pouch length" (i.e., vertically in Figure 1), then the "segments" of Cernohous et al. are arranged transverse to the length rather than extending along the pouch length as claimed. That is, both the segments and the sections do not extend along the pouch length as claimed and illustrated (see e.g., Figures 2 and 4).

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference" (MPEP §2131). For at least the reasons provided above, Nakamura and Cernohous et al. fail to teach each and every element of claim 1 and the claims that depend therefrom. As a result, anticipation is unsupported. Reconsideration and allowance are therefore respectfully requested.

Parker

Claims 1-10, 12-16, 25-28, 32, and 38-46 were rejected under 35 U.S.C. §102(b) as being anticipated by Parker et al. (U.S. Patent No. 5,003,970). Applicants' representative respectfully disagrees.

Parker et al. is directed to a roll form medical bandaging product. A container 31 with an elongate dispensing sleeve 32 has an openable end 33 through which the medical

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material 14 in the container 31 is dispensed. A coil of the medical material 14 is positioned in an enlarged product storage package 34 which is integral and communicates with dispensing sleeve 32 (see e.g., column 6, lines 22-28; Figures 11 and 14).

The apparatus of claim 1, however, is not taught by Parker et al. For example, a pouch having a first end, a second end, and a pouch length extending therebetween is not indentified. Further, Parker et al. fails to teach a continuous length product folded into a packaged configuration including a *plurality of sections arranged along the pouch length*, where each section comprises *at least two folds and a segment spanning therebetween*, the segment also *extending along the pouch length*. If this rejection is maintained, it is respectfully requested that the next Office Action specifically identify the elements of Parker which correspond to the elements of the rejected claims.

Independent claim 25 is also submitted to be novel in view of Parker. For instance, claim 25 describes a compression device adapted to couple to the pouch proximate the first end, the compression device having a first compression member and second, opposing compression member, the *compression members adapted to substantially conform the shape of the first end of the pouch to the shape of the product*. As the specification makes clear, this feature is provided to permit substantial sealing of the pouch around the product as the latter is dispensed and stored (see e.g., Figures 6 and 7).

There is no teaching identified in Parker of such a compression device. Rather, Parker describes a *sealing* device which may be a clamp 36 (see Figure 11) or a "zip-lock" -type integrally-formed zipper 38 (see Figure 12). These devices are designed to seal the sleeve after dispensing. That is, "[w]hen the proper length [of material] has been dispensed through opening 33 [of Parker], it is cut and *the end is tucked back into the dispensing sleeve 32 . . .* [after which the] open end 33 is quickly resealed." Column 6, lines 61-64, emphasis added. There is no teaching identified that the sealing devices of Parker are in any way capable of substantially conforming the shape of the first end of the pouch to the shape of the product as claimed by

Applicants. Thus, the Office Action's statement that "item 36 will clearly conform the shape of the pouch to the shape of the product" is unsupported.

Claim 42 recites both a compression device and a sealing device. For the same reasons mentioned above, Parker does not disclose a compression device as described by applicant let alone a compression device in conjunction with a sealing device. In particular, the Office Action's reliance on "the curved arms of the device" to read on the compression members and reliance on "the flat pressing sections of the device" to read on the sealing members (see Office Action, pages 4-5) is insufficient to anticipate claim 42. For example, the single, curved member of the *sealing* device 36 of Parker does not anticipate a *compression* device having *two* opposing compression members as claimed. Reconsideration and allowance are requested.

While not necessary to overcome the rejections, Applicants' representative also traverses the Office Action's characterization of the dependent claims. For instance, there is no indication that item 14 (see Figure 13 of Nakamura) may function "as a compression device" (see Office Action, page 4, first paragraph) as described and claimed by applicants. With respect to Parker, Applicants' representative disagrees that claims 2-10, 14-16, 26-28, 38-41, and 43-46 are clearly met by Parker (*Id.*, pages 4-5). For instance, there is no disclosure identified in Parker regarding: two sections being generally identical as recited in claim 5; any type of compression device (e.g., claims 8-10); the material configuration (e.g., claim 15-16); compressible compression members (e.g., claims 10 and 40); and the claimed configuration of the closure apparatus (e.g., claim 43). It is respectfully requested that each dependent claim be considered for the particular features addressed therein.

Because anticipation requires that each and every element as set forth in the claim be found in the cited document, Parker fails to anticipate independent claims 1, 25, and 42 as well as the claims that depend therefrom. As a result, anticipation is unsupported. Reconsideration and allowance are therefore respectfully requested.

The 35 U.S.C. §103 Rejections

Nakamura

Claim 23 was rejected under 35 U.S.C. §103(a) as being unpatentable over Nakamura (U.S. Patent No. 5,076,424). A basic tenet of *prima facie* obviousness is that the cited document or combination of documents must teach or suggest all claim elements. For reasons discussed above, Nakamura fails to teach or suggest each and every element (e.g., the segment extending along the pouch length) of claim 1 from which rejected claim 23 depends. Moreover, there is no indication that the mount 19 of Nakamura could be successfully incorporated into a pouch configuration as claimed.

As a result, reconsideration and allowance of claim 23 are respectfully requested.

Parker/Ausit

Claim 29 was rejected under 35 U.S.C. §103(a) as being unpatentable over Parker (U.S. Patent No. 5,003,970) in view of Ausnit (U.S. Patent No. 4,703,518).

As discussed above, Parker fails teach or even suggest all the elements of claim 25 (e.g., no compression device having the claimed characteristics). Ausnit does not remedy this situation as it teaches only a zipper seal. As claim 29 depends from claim 25, Parker in view of Ausit also fails to render claim 29 obvious. Moreover, there is no motivation identified for one of skill in the art to combine Parker with Ausit. Reconsideration and allowance are therefore respectfully requested.

Parker

Claims 11, 21, 30, and 31 were rejected under 35 U.S.C. §103(a) as being unpatentable over Parker. For reasons already enumerated above (see response to anticipation rejection), Parker fails to teach or even suggest all the elements of independent claims 1 and 25.

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Because each of claims 11, 21, 30, and 31 depend from one of these independent claims, Parker also fails to teach each and every element of claims 11, 21, 30, and 31, respectively.

Moreover, these claims recite unique features not disclosed or suggested by Parker. For instance, contrary to the Office Action, there is no disclosure identified to support the assertion that one of skill in the art would "incorporate foam padding into the compression members of item 36 in order to prevent cutting of the pouch 32" (see Office Action, page 6). This is especially true in view of the fact that item 36 is not even used to engage the actual product (see Figure 14). Reconsideration and allowance are respectfully requested.

New Claims

Claims 61 and 62 have been added. Consideration of each new claim is respectfully requested.

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Summary

It is submitted that the pending claims are in condition for allowance and notification to that effect is respectfully requested. The Examiner is invited to contact Applicants' Representatives, at the below-listed telephone number, if it is believed that prosecution of this application may be assisted thereby.

CERTIFICATE UNDER 37 CFR §1.8:

The undersigned hereby certifies that this paper is being deposited with the United States Postal Service as first class mail, in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231 on this 6th day of September, 2001.


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